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12 UNITED STATES DISTRICT COURT  
13  
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA, ) No. CR 11-436(A)-MRW  
Plaintiff, )  
16 ) GOVERNMENT'S OPPOSITION TO  
 ) DEFENDANT'S PROPOSED JURY  
 ) INSTRUCTIONS  
17 v. )  
 ) Trial Date: December 6, 2011  
18 JOEL CIRILO SOSA HERNANDEZ, ) Trial Time: 9:00 a.m.  
 )  
19 Defendant. ) Courtroom of the  
 ) Honorable Michael R. Wilner  
20

21  
22 Plaintiff United States of America, by and through its  
23 attorney of record, the United States Attorney for the Central  
24 District of California, hereby submits its opposition to  
25 defendant's proposed jury instructions for trial in the above-  
26 captioned case.

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1 The government's opposition is based upon the attached  
2 memorandum of points and authorities. The government  
3 respectfully requests leave to file an additional opposition if  
4 defendant files any more proposed jury instructions.

5 DATED: December 2, 2011

Respectfully submitted,

6 ANDRÉ BIROTTE JR.  
United States Attorney

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8 ROBERT E. DUGDALE  
Assistant United States Attorney  
Chief, Criminal Division

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11 \_\_\_\_\_/s/  
JAMES M. LEFT  
Special Assistant United States  
12 Attorney

13 Attorneys for Plaintiff  
United States of America  
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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2           Defendant is charged in the first superseding information  
3 with a pattern or practice of hiring and continuing to employ  
4 illegal aliens, in violation of Title 8, United States Code,  
5 Sections 1324(a)(1)(A), (a)(2), (f)(1). Defendant's two proposed  
6 jury instructions do not accurately reflect the nature of the  
7 charge.

8           Defendant's first proposed jury instruction states that  
9 defendant has been charged under Sections 1324a(a)(1)(A) and  
10 (a)(2) and is "subject to subsection (e)(4)." This is incorrect.  
11 Defendant is not charged under subsection (e)(4). As a matter of  
12 statute, any civil fines imposed under subsection (e)(4) are not  
13 a matter for this Court. Section 1324a(e) is a compliance  
14 section. If an individual or entity contests the imposition of a  
15 fine, the matter is heard before an administrative law judge. 8  
16 U.S.C. § 1324a(e)(3)(A) and (B). An administrative law judge may  
17 impose a civil fine, or it may be imposed by an immigration  
18 officer if no hearing is requested. 8 U.S.C. § 1324a(e)(3)(B)  
19 and (C). Finally, it is inappropriate for a jury to determine a  
20 civil penalty in a criminal case.

21           Defendant's second proposed jury instruction is not  
22 completely accurate, because it does not fully articulate the  
23 bases by which defendant may be guilty of charged offense.  
24 Defendant's second instruction presupposed that the government  
25 must prove that defendant both knowingly hired and knowingly  
26 continued to employ illegal aliens. However, subsection (f)(1)  
27 criminalizes a pattern or practice of one or the other. Thus,  
28 defendant may be found guilty if (1) defendant knowingly hired an

1 alien unauthorized for employment and there was a pattern or  
2 practice of such conduct under Sections 1324a(a)(1)(A) and  
3 (f)(1); or (2) defendant continued to employ an unauthorized  
4 alien and there was a pattern or practice of such conduct under  
5 Sections 1324a(a)(2) and (f)(1). The government's amended jury  
6 instructions specifically address both forms of criminal conduct  
7 and more accurately describes the charged offense.

8 DATED: December 2, 2011

Respectfully submitted,

9 ANDRÉ BIROTTE JR.  
United States Attorney

10 ROBERT E. DUGDALE  
11 Assistant United States Attorney  
12 Chief, Criminal Division

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14 /s/  
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16 Attorneys for Plaintiff  
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